

HOWARD L. ROSS

IBLA 80-115

Decided July 22, 1980

Appeal from a decision of the Arizona State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer A 12357.

Set aside and remanded.

1. Oil and Gas Leases: Discretion to Lease

In the absence of a withdrawal of public land from mineral leasing, public lands are usually subject to leasing for oil and gas in the discretion of and under conditions imposed by the Secretary of the Interior, but lands withdrawn for use by the Department of Defense may be leased only where the Secretary of Defense, after consultation with the Secretary of the Interior, determines that such leasing is not inconsistent with the military use.

2. Oil and Gas Leases: Consent of Agency – Oil and Gas Leases: Discretion to Lease

Where public lands are withdrawn for use by the National Guard, the refusal of an offer to lease the land for oil and gas must be supported by cogent and specific reasons in order to avoid a determination that the action is arbitrary, capricious, or an abuse of discretion.

APPEARANCES: Howard L. Ross, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Howard L. Ross appeals from the Arizona State Office, Bureau of Land Management (BLM), decision of October 19, 1979, insofar as it rejected his noncompetitive oil and gas lease offer A 12357 for land in sec. 24, T. 4 S., R. 9 E., Gila and Salt River meridian, withdrawn

by Exec. Order No. 1633 for use by the Arizona National Guard. The rejection was based upon the determination by the Adjutant General of the Arizona National Guard that it would not be in the best interest of the National Guard to allow mineral leasing of the land used for military purposes.

In his statement of reasons on appeal, appellant asserts he could conduct oil and gas explorations in close harmony with any military activities currently being conducted upon the land.

[1] Appellant's contention warrants consideration. Although the Secretary does have discretion in issuing oil and gas leases, a decision to reject must be founded upon reason. Stipulations to protect the land use values of the National Guard should be considered carefully before complete rejection of an offer is made. Even as this Board requires that stipulations be based on valid reasons, so it compels that a rejection of an offer must rest on a sound foundation. Stanley M. Edwards, 24 IBLA 12, 83 I.D. 33 (1976).

The status maps in the case file indicate the presence of a railroad right-of-way and of a highway right-of-way in the said sec. 24.

43 U.S.C. § 158 (1976) states that all minerals on withdrawals of public land for use by any agency of the Department of Defense, except specific withdrawals for naval petroleum, naval oil shale, or naval coal reserves, are under the jurisdiction of the Secretary of the Interior, and that disposal of the minerals shall be under applicable public land mining or mineral leasing laws, provided that no disposition of, or exploration for, the minerals shall be made where the Secretary of Defense, after consultation with the Secretary of the Interior, determines such disposition or exploration is inconsistent with military use of the withdrawn lands.

[2] Where BLM rejects an oil and gas lease offer for public lands withdrawn for the Arizona National Guard for use as a rifle range, solely on the summary objection of the National Guard, and where there is no indication that BLM or the Guard officials made an independent determination whether leasing the land is or is not in the public interest, and no reasons were given, the rejection is not a proper exercise of discretion. Cf. Edwards, supra. In light of the existing conflicting uses of parts of the military withdrawal for right-of-way purposes and for reclamation purposes, the record does not show that either agency considered whether or not leasing might be in the public interest, and if so, whether such leasing with special stipulations could be compatible with National Guard use of the lands as a rifle range. It is not even asserted that the Guard is using the land, or any part of it, as a rifle range – the only use authorized by the withdrawal order. Cf. Edwards, supra. All factors present should be analyzed, including the willingness of the applicant to accept

stipulations for the protection of the military interests, if any, and then decide where the greater public interest lies. BLM should consult with the Adjutant General to ascertain if the National Guard would agree to an oil and gas lease on sec. 24, T. 4 S., R. 9 E., with reasonable protective stipulations. If it is ultimately decided to reject the offer as contrary to the public interest, the reasons for that decision must be enumerated in order to avoid a determination that the action is arbitrary, capricious, or an abuse of discretion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded to BLM for further action consistent with this opinion.

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Douglas E. Henriques  
Administrative Judge

I concur.

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Edward W. Stuebing  
Administrative Judge

ADMINISTRATIVE JUDGE THOMPSON CONCURRING IN THE RESULT:

I reserve any ruling on the applicability of 43 U.S.C. § 158 (1976) to lands withdrawn for a State National Guard, but concur in the remand for the other reasons expressed in the majority opinion.

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Joan B. Thompson  
Administrative Judge

